

The opinion in support of the decision being  
entered today is not binding precedent of the Board.

Paper 11752

By: Carol A. Spiegel  
Board of Patent Appeals and Interferences  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Tel: 703-308-9797  
Fax: 703-305-0942

Filed: February 25, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

GENCELL S.A.

Junior Party  
U.S. Patent 6,127,175

v.

QING WANG, MITCHELL H. FINER and XIAO-CHI JIA

Junior Party,  
Application 08/333,680

v.

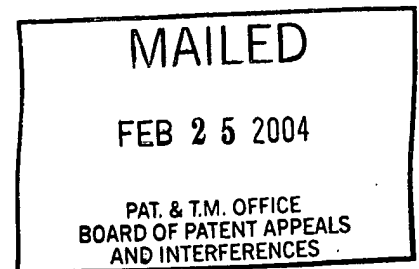
GENCELL S.A.

Senior Party  
Application 08/397,225

Patent Interference No. 104,830 (CAS)

**REDECLARATION**  
(37 CFR § 1.611)

In view of (a) the decision on preliminary motions (Paper 116), (b) the entry of



amendments to Gencell/Perricaudet '225 claims 1, 2 and 11 (Paper 102), and (c) the decision dismissing Gencell preliminary motion 1 (Paper 101) and reconsideration thereof (Paper 112), it is

ORDERED that the interference is redeclared as follows.

**I. Counts 1, 2 and 6 no longer remain in the interference.**

1. There is no interference-in-fact between the subject matter of the claims designated as corresponding to Count 1, i.e., between the subject matter of Wang claims 46 and 56 and Perricaudet claims 1-3, 9, 12-18, 28, 30, 35 and 40-41 (Paper 116, pp. 4, 29-32 and 44; no Vigne claims correspond to Count 1).
2. There is no interference-in-fact between the subject matter of the claims designated as corresponding to Count 2, i.e., between the subject matter of Wang claim 48 and Perricaudet claims 19-20, 23 and 25-27 (Paper 116, pp. 3-4, 13-22, 32-33 and 44; no Vigne claims correspond to Count 2).
3. There is no interference-in-fact between the subject matter of the claims designated as corresponding to Count 6, i.e., between the subject matter of Wang claims 48 and 57 and Perricaudet claim 24 (Paper 116, pp. 5 and 43-44; no Vigne claims correspond to Count 6).
4. Thus, Counts 1, 2 and 6 no longer remain in the interference.

**II. Count 3 and the status of the parties remain unchanged**

**A. Junior party Vigne/Gencell**

5. Junior party, Emmanuelle Vigne, Michel Perricaudet, Jean-François Dedieu, Cécile Orsini, Patrice Yeh, Martine Latta and Edouardo Prost (**Vigne/Gencell**) is

involved on the basis of U.S. Patent 6,127,175 ("Vigne '175"), issued October 3, 2000, based on U.S. application 08/875,223 ("Vigne '223"), filed July 17, 1997.

6. Vigne '175 has been accorded benefit for the purpose of priority of
- (i) PCT application PCT/FR96/00088, filed January 19, 1996 ("Vigne PCT"),
  - (ii) FR application 95/10541, filed September 8, 1995 ("Vigne '541"),
  - (iii) FR application 95/06532, filed June 1, 1995 ("Vigne '532") and
  - (iv) FR application 95/00747, filed January 20, 1995 ("Vigne '747").

**B. Junior party Wang**

7. Junior party, Qing Wang, Mitchell H. Finer and Xiao-Chi Jia (**Wang**) is involved on the basis of U.S. application 08/333,680 ("Wang '680"), filed November 3, 1994.

**C. Senior party Perricaudet/Gencell**

8. Senior party, Michel Perricaudet, Emmanuelle Vigne and Patrice Yeh (**Perricaudet/Gencell**) is involved on the basis of U.S. application 08/397,225 ("Perricaudet '225"), filed March 28, 1995.
9. Perricaudet '225 has been accorded benefit for the purpose of priority of
- (i) PCT application PCT/FR94/00851, filed July 8, 1994 ("Perricaudet PCT"),
  - (ii) FR application 94/04590, filed April 18, 1994 ("Perricaudet '590") and
  - (iii) FR application 93/08596, filed July 13, 1993 ("Perricaudet '596").

**D. Count 3**

10. Count 3 remains the same, but the claim correspondence has changed (Paper 116, pp. 4-5, 33-35 and 44).

11. **Count 3**

The defective recombinant adenovirus of claim 33 of Vigne patent '175

or

The replication-defective recombinant adenovirus of claim 37 of the '680 Wang application

or

The replication defective recombinant adenovirus of claim 34 of the '225 Perricaudet application.

**E. Claims corresponding to Count 3**

12. The claims of the parties which correspond to Count 3 are:

Wang	37-38, 46-47, 52, 54, 56
Vigne	33
Perricaudet	34

13. Thus, as to Count 3, Perricaudet/Gencell remains senior party, while Wang and Vigne/Gencell remain junior parties.

**III. Count 4 is replaced by new Count 7. Perricaudet/Gencell is no longer a party. Wang remains senior party to Vigne/Gencell.**

14. Count 4 is replaced by new Count 7 because there is no interference-in-fact between the subject matter of Perricaudet claims 19-23, 25, 27 and 33 and the subject matter of either Wang claims 39-44 and 57 or Vigne claims 1-6, 11-16, 20-21 and 23-25 (Paper 116, pp. 5, 35-40 and 44).<sup>1</sup>

---

<sup>1</sup> Count 7 is Count 4 rewritten to delete the subject matter of Perricaudet claim 22, i.e., (deletions in ~~strikeout~~):

The recombinant cell line of claim 1 of Vigne patent '175

or

The packaging cell line of claim 39 of the '680 Wang application

or

~~The cell line of claim 22 of the '225 Perricaudet application.~~

**IV. Count 7**

**A. Junior party**

15. Junior party Vigne/Gencell is involved on the basis of the Vigne '175 patent, issued October 3, 2000, based on the Vigne '223 application filed July 17, 1997.

16. Vigne '175 has been accorded benefit for the purpose of priority of (i) the January 19, 1996 filing date of Vigne PCT, (ii) the September 8, 1995 filing date of Vigne '541, (iii) the June 1, 1995 filing date of Vigne '532 and (iv) the January 20, 1995 filing date of Vigne '747.

**B. Senior party**

17. Senior party Wang is involved on the basis of Wang '680, filed November 3, 1994.

**C. Count 7**

18. **Count 7**

The recombinant cell line of claim 1 of Vigne patent '175  
or

The packaging cell line of claim 39 of the '680 Wang application.

**D. Claims corresponding to Count 7**

The claims of the parties which correspond to Count 7 are:

Wang	39-44, 57
Vigne	1-6, 11-16, 20-21, 23-25
Perricaudet	none

19. Thus, as to Count 7, to which Perricaudet/Gencell is not a party, Wang is the senior party and Vigne/Gencell is the junior party.

**V. Count 5 is replaced by new Count 8 aka Gencell's "Proposed count 5." Denial of Gencell preliminary motion 14 results in Wang becoming senior party. Perricaudet/Gencell is junior party.**

20. Count 5 is replaced by new Count 8, i.e., Gencell's "Proposed count 5" renumbered (Paper 116, pp. 48-49).<sup>2</sup>

21. The denial of Gencell preliminary motion 14 (Paper 116, pp. 51-52) has stripped Perricaudet/Gencell of benefit for the purpose of priority of (i) the July 8, 1994 filing date of PCT application PCT/FR94/00851, (ii) the April 18, 1994 filing date of FR application 94/04590 and (iii) the July 13, 1993 filing date of FR application 93/08596.

**VI. Count 8**

**A. Junior party**

22. Junior party Perricaudet/Gencell is involved on the basis of Perricaudet '225, filed March 28, 1995.

**B. Senior party**

23. Senior party Wang is involved on the basis of Wang '680, filed November 3, 1994.

---

<sup>2</sup> Count 8 is Count 5 rewritten to align the deleted gene regions correctly, i.e., (deletions in ~~strikeout~~; additions in **bold**):

The recombinant adenoviral vector of claim 46 of the Wang '680 application, wherein the two gene regions are E1, **E2A** and E4

or

The replication-defective adenovirus of claim 42 of the '225 Perricaudet application, wherein the adenoviral early regions are E1, **E2A** and E4.

**C. Count 8**

24. **Count 8**

The recombinant adenoviral vector of claim 46 of the Wang '680 application, wherein the gene regions are E1, E2A and E4  
or

The recombinant adenoviral vector of claim 42 of the Perricaudet '225 application, wherein the adenoviral early regions are E1, E2A and E4.

**D. Claims corresponding to Count 8**

25. The claims of the parties which correspond to Count 8 are:

Wang	37, 46, 54, 56
Vigne	none
Perricaudet	42

26. Thus, as to Count 8, Perricaudet/Gencell is now junior party, while Wang becomes senior party.

**VII. Claims not involved in the interference**

27. The claims of the parties are:

Wang	37-48, 52, 54, 56-57
Vigne	1-33
Perricaudet	1-3, 6, 9-30, 33-42

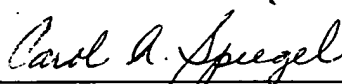
28. The claims of the parties which do not correspond to any of Counts 3, 7 and 8, and therefore are not involved in the interference, are:

Wang	45, 48
Vigne	7-10, 17-19, 22, 26-32
Perricaudet	1-3, 6, 9-30, 33, 35-41

**VIII. Procedural orders**

FURTHER ORDERED that the procedures set forth in the attached STANDING ORDER are in effect for the remainder of the interference.

Courtesy copies of the current STANDING ORDER and the order used to set times for taking action in the priority phase of the interference will be sent, but not faxed, with this order. An appendix summarizing the "finalized" counts is attached.



---

CAROL A. SPIEGEL  
Administrative Patent Judge

February 25, 2004  
Arlington, VA

Enc: ORDERTE8 (Revised 27 January 2004)  
APPENDIX of "finalized" counts

cc (via fax and first class mail):

Wang  
(real party in interest  
CELL GENESYS, INC.):

Steven B. Kelber, Esq.  
PIPER MARBURY RUDNICK & WOLFE LLP  
1200 Nineteenth Street, N.W.  
Washington, DC 20036-2430  
Tel: 202-861-3900  
Fax: 202-223-2085  
E-mail: [steven.kelber@piperrudnick.com](mailto:steven.kelber@piperrudnick.com)

Linda R. Judge, Esq.  
CELL GENESYS, INC.  
342 Lakeside Drive  
Foster City, CA 94404  
Tel: 650-425-4650  
Fax: 650-349-7392  
E-mail: [linda.judge@cellgenesys.com](mailto:linda.judge@cellgenesys.com)

Gencell/Vigne/Perricaudet  
(real party in interest  
GENCELL S.A.):

Rochelle K. Seide, Esq.  
James J. Maune, Esq.  
BAKER BOTTS LLP  
30 Rockefeller Plaza, 44th Floor  
New York, NY 10012-4498  
Tel: 212-408-2626  
Fax: 212-408-2501



**APPENDIX**  
(summarizing "finalized" counts)

Count 3: The recombinant adenovirus of Vigne claim 33 or Wang claim 37 or Perricaudet claim 34.			
Parties	Vigne	Wang	Perricaudet
corresponding claims	33	37-38, 46-47, 52, 54, 56	34
earliest accorded benefit date for the purpose of priority	20 January 1995	3 November 1994	13 July 1993
Count 7: The cell line of Vigne claim 1 or Wang claim 39			
Parties	Vigne	Wang	
corresponding claims	1-6, 11-16, 20-21, 23-25	39-44, 57	
earliest accorded benefit date for the purpose of priority	20 January 1995	3 November 1994	
Count 8: The recombinant adenoviral vector of Wang claim 46, wherein the gene regions are E1, E2A and E4, or of Perricaudet claim 42, wherein the adenoviral early gene regions are E1, E2A and E4.			
Parties		Wang	Perricaudet
corresponding claims		37, 46, 54, 56	42
earliest accorded benefit date for the purpose of priority		3 November 1994	28 March 1995

N.B. Neither Vigne/Gencell nor Perricaudet/Gencell filed a preliminary statement.